

Message

From: Leah Aden [laden@naacpldf.org]
Sent: 11/30/2018 11:34:06 PM
To: Stein, Jonathan [Stein.Jonathan@epa.gov]; Marianne L. Engelman-Lado [mle2128@columbia.edu]; McGhee, Debra [mcghee.debra@epa.gov]; Rhines, Dale [rhines.dale@epa.gov]; Covington, Jeryl [Covington.Jeryl@epa.gov]; Biffi, Betsy [Biffi.Betsy@epa.gov]
CC: Dorka, Lilian [Dorka.Lilian@epa.gov]; Louis Fisher [lfisher@naacpldf.org]; Suzanne Novak [snovak@earthjustice.org]; Jonathan J. Smith [jjsmith@earthjustice.org]; Northrop, Caleb [caleb.northrop@yale.edu]; Acheampong, Elvis [elvis.acheampong@yale.edu]; Nicole Sockett [nicole.sockett@columbia.edu]; Sarah Jackson [smj2166@columbia.edu]; elloyd@law.columbia.edu; Leah Aden [laden@naacpldf.org]
Subject: RE: Ashurst Bar/Smith Community Organization, Case No. 16R-17-R4
Attachments: ATT00001.txt; Detailed Facility Report _ ECHO _ US EPA (Pulled 2018-11-6).pdf

Dear Director Dorka –

On behalf of complainants, Ashurst Bar/Smith Community Organization (ABSCO), we write to bring your attention to EPA's Enforcement and Compliance History Online (ECHO) report. *See* Attachment (last accessed Nov. 6, 2018). It shows Stone's Throw Landfill's pattern of non-compliance with the Clean Water Act (CWA) and/or the National Pollutant Discharge Elimination System (NPDES) program requirements for five of the last twelve quarters by failing to report required discharge levels or, when the Landfill does report them, violating standards. For example, the most recent two quarters show violations of *significant non-compliance* with the CWA due to failure to report required discharge monitoring reports (DMRs). As of November 2, 2018, EPA had not received a DMR from this facility. In addition, the Landfill has violated the CWA's standards on turbidity levels in four reporting periods, including the last two reporting periods.

It should be noted that the ECHO report uses a 3-mile radius from this facility and provides demographic data for that geographic area. A majority (55%) of those residing within the 3-mile radius of this facility are racial minority individuals. As information previously submitted by complainants indicates, the racial composition of the community in even closer proximity to Stone's Throw—a radius of 1 to 2-miles—is comprised in higher proportion (over 70%) of Black residents.

Please let us know if you have any question.

Leah C. Aden
 Louis Fisher
 NAACP Legal Defense & Educational Fund, Inc.
 40 Rector Street, 5th Floor
 New York, NY 10006
laden@naacpldf.org
 212-965-7715

Marianne Engelman Lado
 Edward Lloyd
 Sarah Jackson*
 Nicole Sockett*
 Morningside Heights legal Services
 Environmental Law Clinic
 Columbia University School of Law
 435 West 116th Street
 New York, NY. 10027
mle2128@columbia.edu

Ex. 6 Personal Privacy (PP)

*clinicians

With assistance from:

Caleb Northrop

Elvis Acheampong

Members of EJ Capstone

Yale University School of Forestry & Environmental Science

Suzanne Novak

Jonathan Smith

Earthjustice

48 Wall Street, 19th Floor

New York, NY 10005

snovak@earthjustice.orgjjsmith@earthjustice.org

212-845-4981

On behalf of the Ashurst Bar/Smith Community Organization.

(end)

Leah Aden**Deputy Director of Litigation****NAACP Legal Defense and Educational Fund, Inc.**

40 Rector Street, 5th Floor, New York, NY 10006

☐ 212.965.7715 ☐ LAden@naacpldf.orgwww.naacpldf.org  

PRIVILEGE AND CONFIDENTIALITY NOTICE: This email and any attachments may contain privileged or confidential information and is/are for the sole use of the intended recipient(s). Any unauthorized use or disclosure of this communication is prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.

From: Stein, Jonathan <Stein.Jonathan@epa.gov>**Sent:** Tuesday, November 20, 2018 2:17 PM**To:** Marianne L. Engelman-Lado <mle2128@columbia.edu>; McGhee, Debra <mcghee.debra@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Biffl, Betsy <Biffl.Betsy@epa.gov>**Cc:** Dorka, Lilian <Dorka.Lilian@epa.gov>; Louis Fisher <lfisher@naacpldf.org>; Leah Aden <laden@naacpldf.org>; Suzanne Novak <snovak@earthjustice.org>; Jonathan J. Smith <jjsmith@earthjustice.org>; Northrop, Caleb <caleb.northrop@yale.edu>; Acheampong, Elvis <elvis.acheampong@yale.edu>; Nicole Sockett <nicole.sockett@columbia.edu>; Sarah Jackson <smj2166@columbia.edu>; elloyd@law.columbia.edu**Subject:** RE: Ashurst Bar/Smith Community Organization, Case No. 16R-17-R4

Hello Marianne,

Thank you very much for sending these.

Best Regards,

Jonathan M. Stein
Attorney Advisor
Office of General Counsel – External Civil Rights Compliance Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. | Mailcode 2310A | Washington, DC 20460

202/564-2088 | Stein.Jonathan@epa.gov

CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under the Freedom of Information Act (FOIA) without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

#ALLCAPS



Please consider the environment before printing this email.

From: Marianne L. Engelman-Lado <mle2128@columbia.edu>

Sent: Tuesday, November 20, 2018 12:55 PM

To: McGhee, Debra <mcghee.debra@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Stein, Jonathan <Stein.Jonathan@epa.gov>; Biffi, Betsy <Biffi.Betsy@epa.gov>

Cc: Dorka, Lilian <Dorka.Lilian@epa.gov>; Louis Fisher <lfisher@naacpldf.org>; Leah Aden <LAden@naacpldf.org>; Suzanne Novak <snovak@earthjustice.org>; Jonathan J. Smith <jjsmith@earthjustice.org>; Northrop, Caleb <caleb.northrop@yale.edu>; Acheampong, Elvis <elvis.acheampong@yale.edu>; Nicole Sockett <nicole.sockett@columbia.edu>; Sarah Jackson <smj2166@columbia.edu>; elloyd@law.columbia.edu

Subject: Ashurst Bar/Smith Community Organization, Case No. 16R-17-R4

Dear Debra,

This email is intended to respond to your request for an affidavit from Ex. 6 Personal Privacy (PP) regarding the photographs submitted in October, 2018 by Ashurst Bar/Smith Community Organization (“ABSCO”) in support of its March 5, 2018 Complaint in EPA External Civil Rights Compliance Office (“ECRCO”) Case No. 16R-17-R4. The affidavit details the circumstances surrounding the photographs and provides the date and time each photograph was taken.

The photographs described are included as exhibits and attached to this email as a pdf. As you know, ABSCO submitted the photographs to ECRCO in October, 2018 in jpeg format with accompanying metadata. Please let us know if you have any difficulty downloading the photographs or related data.

The photographs provide support for ABSCO’s complaint under Title VI of the Civil Rights Act of 1964, 42 USC 2000d and EPA regulations, 40 CFR Part 7, alleging that ADEM’s decision to reissue the operating permit for Stone’s Throw Landfill will have a disparate impact on the basis of race. Specifically, the photographs document testimony by community members that garbage in open cells remains uncovered at Stone’s Throw after hours exacerbating odor and other adverse impacts, that alternate daily cover is inadequate, and that the uncovered garbage attracts vultures.

This email also provides information in response to your question regarding whether Ashurst Bar/Smith residents had previously raised concerns about alternate daily cover with Alabama Department of Environmental Management (“ADEM”). In fact, written comments dated November 15, 2016 submitted by

Ex. 6 Personal Privacy (PP)

to ADEM specifically raised this concern. In addition, however, many residents also complained about odor and loose trash in the area, which provided ample notice to ADEM of adverse impacts and a basis for ADEM to investigate and address sources of the problems at the site.

Finally, attached please find maps representing the distance between Stone's Throw Landfill and the closest monitors used for determining compliance with the National Ambient Air Quality Standards ("NAAQS"). As discussed below, data from regional monitors are too far away to detect impacts on the Ashurst Bar/Smith community.

Reports of Uncovered Trash at Stone's Throw

In written comments submitted to ADEM, Ashurst Bar/Smith community member Ex. 6 Personal Privacy (PP) explicitly raised concerns about alternate daily cover and insufficient cover at the Stone's Throw Municipal Solid Waste Landfill. See Ex. 6 Personal Privacy (PP) "Comments in Opposition to Renewal Permit No. 62-11 (Nov. 15, 2016), Public Comments, at 7 (Attachment A, available at <https://www.dropbox.com/s/7h1ahlto1aeekt8/Attachment%20A%20-%20Public%20Comments.pdf?dl=0>). Specifically, referring to a June 4, 2003 letter from Jonathan Cosby of Environmental Consulting and Engineering, Inc. that outlined leachate recirculation practices and the landfill operators' request for spraying leachate on the working face, as well as the request for permission to use a tarp for daily cover rather than soil, Gosa wrote,

[T]he use of a tarp was requested for daily cover instead of soil, (which I hope is clean and not contaminated with toxins). This is a concern for drainage which might wash off and/or [be] driven on to our road by trucks depositing on the face of the landfill. I find this a public health issue and in my opinion these are legitimate environmental concerns which should not be ignored.

Ex. 6 Personal Privacy (PP)

testimony documents at least one specific instance when a community member raised the issue of insufficient landfill cover and potential environmental impacts that may result from insufficient cover.

Additionally, at least twenty references to stench and odor from the landfill were submitted to ADEM in written comments during the notice and comment period on the permit. See *Attachment A* (sent under separate cover given memory limits),

Ex. 6 Personal Privacy (PP)

Ex. 6 Personal Privacy (PP)

At least ten oral comments made during the permit hearing conducted by ADEM on November 10, 2016, also referenced stench and odor from the landfill. See "In the Matter of Alabama Department of Environmental Management: Public Hearing," Tallassee, AL (Nov. 10, 2016), at

Ex. 6 Personal Privacy (PP)

Ex. 6 Personal Privacy (PP)

Moreover, issues of blowing trash and litter from the landfill were raised at least three times in written comments, *see Attachment A*, [Ex. 6 Personal Privacy (PP)]

[Ex. 6 Personal Privacy (PP)] and at least two times in oral comments submitted to ADEM. *See* “Public Hearing Record,” at [Ex. 6 Personal Privacy (PP)] Loose trash and litter in the community may have fallen off trucks or may have blown off open cells left inadequately covered.

Once these issues were raised, ADEM was on notice of the impact of landfill operations. Given the multitude of complaints over time regarding stench as well as explicit concerns about environmental and social impacts of insufficient cover at Stone’s Throw, ADEM should have done its own investigation regarding whether the landfill permit and, particularly, variances allowing alternate daily cover, were sufficiently protective of the surrounding Ashurst Bar/Smith community and addressed these concerns.

Irrelevance of Air Monitoring Regarding Regional Compliance with the NAAQS to the Question of Adverse Impact on the Affected Community

In anticipation of analysis by EPA of additional evidence of air pollution, ABSCO also wants to make clear that the question whether the region is in compliance with the National Ambient Air Quality Standards (“NAAQS”) does not bear on whether the largely African American community living in proximity to Stone’s Throw Landfill is exposed to and adversely affected by air pollutants from the Landfill. According to EPA’s online tool AirData Air Quality Monitors, the nearest active Ozone monitor is 24.4 miles from the Stone’s Throw landfill. Attachment B, “Location of Air Monitors near Tallassee,” at 2 (site accessed Oct. 8, 2018). The nearest active monitor that measures PM_{2.5} (particulate matter) and PM₁₀ is 25.9 miles from Stone’s Throw. Attachment B, “Location of Air Monitors near Tallassee,” page 3 (site accessed Oct. 8, 2018). Given the significant distance of the landfill from the nearest regional monitors, data from these monitors are irrelevant to a determination as to whether people in the Ashurst Bar Smith community are over a threshold health limit for exposure to air pollutants. Thus, although the region may be in compliance with the NAAQS, the regional air monitors should not be used as an indication of the local air quality for the communities near Stone’s Throw.

Please let us know if these materials raise any question or whether you require additional information.

Sincerely,

Marianne

Marianne Engelman Lado
Edward Lloyd
Sarah Jackson*
Nicole Sockett*
Morningside Heights legal Services
Environmental Law Clinic
Columbia University School of Law
435 West 116th Street
New York, NY. 10027
mle2128@columbia.edu

[Ex. 6 Personal Privacy (PP)] (cell)

*clinicians

With assistance from:

Caleb Northrop

Elvis Acheampong

Members of EJ Capstone

Yale University School of Forestry & Environmental Science

Leah C. Aden

Deputy Director of Litigation

Louis Fisher

Harvard Law Review Public Interest Fellow

NAACP Legal Defense & Educational Fund, Inc.

40 Rector Street, 5th Floor

New York, NY 10006

laden@naacpldf.org

lfisher@naacpldf.org

212-965-7715

Suzanne Novak

Jonathan Smith

Earthjustice

48 Wall Street, 19th Floor

New York, NY 10005

snovak@earthjustice.org

jjsmith@earthjustice.org

212-845-4981

On behalf of the Ashurst Bar/Smith Community Organization.